STATE OF MICHIGAN

COURT OF APPEALS

	UNPUBLISHED April 26, 2011
In the Matter of ALONZO/PARKS, Minors.	No. 298971 Kent Circuit Court LC Nos. 09-050692-NA; 09-050693-NA; 09-050694-NA; 09-050695-NA; 09-050696-NA
In the Matter of PARKS, Minors.	No. 298972 Kent Circuit Court LC Nos. 09-050695-NA; 09-050696-NA
In the Matter of D. PARKS, JR., Minor.	No. 300364 Kent Circuit Court Family Division LC No. 10-052087-NA
In the Matter of D. PARKS, JR., Minor.	No. 300365 Kent Circuit Court Family Division LC No. 10-052087-NA

Before: SHAPIRO, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

In these consolidated appeals, respondent L. Alonzo ("respondent-mother") and respondent D. Parks ("respondent Parks") appeal as of right from the trial court's separate orders terminating their parental rights to the various minor children. In Docket No. 298971, respondent-mother appeals as of right from the trial court's June 2010 order terminating her parental rights to her five older children pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), and (g). In Docket No. 298972, respondent Parks appeals as of right from the same order, which terminated his parental rights to the two younger children, HP and AP, pursuant to the same statutory

grounds. In Docket No. 300364, respondent-mother appeals as of right from the trial court's September 2010 order terminating her parental rights to her youngest child, DP, pursuant to MCL 712A.19b(3)(i) and (l). In Docket No. 300365, respondent Parks appeals as of right from the same September 2010 order, which also terminated his parental rights to DP pursuant to MCL 712A.19b(3)(i) and (l). We affirm.

Both respondents challenge the trial court's findings regarding the existence of a statutory ground for termination. We review the trial court's findings of fact for clear error. MCR 3.977(K); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). Special deference is given to the trial court's special opportunity to judge the weight of evidence and the credibility of witnesses who appear before it. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake was made. *In re JK*, 468 Mich at 209-210.

I. DOCKET NO. 298971

Respondent-mother argues that the trial court erred in finding that the three statutory grounds for termination were established by clear and convincing evidence. We disagree.

With respect to § 19b(3)(c)(*i*), the record does not support respondent-mother's claim that the cleanliness of her home was a condition that led to the initial adjudication of her children as temporary court wards. The court obtained jurisdiction over the children based on respondent-mother's plea of admission to allegations that she was unable to provide a stable home for the children, that she was unable to manage her finances, and that she had deficient parenting skills that affected her ability to provide a safe home environment for the children. The evidence at the termination hearing indicated that respondent-mother still did not have a stable financial plan to pay for utilities in her home and that, despite receiving services, she was unable to internalize the parenting skills that she was taught. The trial court did not clearly err in finding that § 19b(3)(c)(*i*) was established by clear and convincing evidence.

Although only one statutory ground for termination is required, *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000), the trial court also did not clearly err in finding that other conditions existed to support termination under § 19b(3)(c)(*ii*). The evidence that respondent-mother failed to adequately address the domestic violence issues supports the trial court's decision. A respondent's failure to work on a treatment plan, or benefit therefrom, is evidence that a child will be at risk of harm in the respondent's home. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). The same evidence that supports termination under §§ 19b(3)(c)(*i*) and (c)(*ii*) also supports the trial court's determination that respondent-mother failed to provide proper care or custody for the children and that there is no reasonable expectation that she will be able to do so within a reasonable time considering the children's ages, thereby warranting termination under § 19b(3)(g).

We reject respondent-mother's argument that termination was improper because petitioner failed to provide reasonable services to reunify the family. The reasonableness of services may affect the sufficiency of the evidence in support of a statutory ground for termination. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). In considering the services offered to respondent-mother in this case, it is necessary to consider the child protection

proceedings as a whole. *In re LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973). The caseworker's inability to successfully make an unannounced visit to respondent-mother's home does not render the services provided to her unreasonable. Further, the record discloses that respondent-mother was given an opportunity to participate in a form of family counseling with her two oldest children through the Project Return Home program, but chose not to do so. Accordingly, there is no basis for respondent-mother's claim that she was not offered an opportunity to engage in family counseling. Indeed, this evidence is consistent with the trial court's observation that respondent-mother declined to participate in some services. The services as a whole were reasonable and sufficient to enable the trial court to evaluate the statutory grounds for termination and determine that respondent-mother was not reasonably likely to benefit from further services.

Respondent-mother also argues that the trial court erred in excluding two proposed exhibits as a discovery sanction. Any error in excluding the exhibits was harmless under MCR 2.613(A), because the subject matter of the exhibits was addressed in other testimony. See MCR 3.901(B)(1), MCR 3.902(A), and *In re Utrera*, 281 Mich App 1, 14; 761 NW2d 253 (2008). Further, because respondent-mother was not prejudiced by the exclusion of the exhibits, her related ineffective assistance of counsel claim based on counsel's failure to provide the exhibits during discovery also cannot succeed. *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2001); see also *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001).

Finally, the trial court did not clearly err in determining that termination of respondent-mother's parental rights was in the children's best interests. MCL 712A.19b(5); *In re JK*, 468 Mich at 209; *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). Although a trial court is permitted to place a child with a guardian instead of terminating parental rights, it is not required to do so if it is not in the child's best interests. MCL 712A.19a(7)(c); see also *In re Mason*, 486 Mich 142, 169; 782 NW2d 747 (2010). In this case, petitioner's decision to pursue a possible guardianship for the oldest child with his father did not preclude termination of respondent-mother's parental rights. See *In re S R*, 229 Mich App 310, 316-317; 581 NW2d 291 (1998) (Michigan law permits termination of only one parent's parental rights). While the Supreme Court indicated in *In re Mason*, 486 Mich at 164, that a child's placement with a respondent's family is a factor to be considered in determining whether termination is in a child's best interests, the principal issue in that case concerned the petitioner's failure to provide an incarcerated parent with a meaningful opportunity to participate in a treatment plan. *Id.* at 168-169. In this case by contrast, respondent-mother was provided with a meaningful opportunity to participate in a treatment plan. In addition, the trial court heard testimony regarding the emotional issues associated with having the children continue a relationship with respondent-mother. Further, while each child was placed with a maternal relative, there was no evidence that those relatives were open to guardianships. Indeed, respondent-mother did not propose a guardianship plan at the termination hearing, but rather sought a delay to evaluate whether the children's current placements would work out and whether it would truly be in the children's best interests to terminate parental rights.

Given the trial court's consideration of the caseworker's testimony that termination would provide the children with the emotional stability they needed, and the absence of any evidence that a guardianship plan was presented to the trial court, remand for a further explanation of the trial court's best interests decision to explicitly address possible guardianships

is unnecessary. See generally *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). Considering the record as a whole, the trial court did not clearly err in finding that termination of respondent-mother's parental rights was in the children's best interests.

II. DOCKET NO. 298972

Respondent Parks' sole claim in Docket No. 298972 is that the trial court erred in finding clear and convincing evidence to terminate his parental rights to his two children. We find no error.

With respect to § 19b(3)(c)(*i*), respondent Parks tendered a plea of admission to the same allegations as respondent-mother. Respondent Parks admitted that he lived with respondent-mother and also admitted the allegations concerning the unpaid utilities in her home. While respondent Parks was not the legal father of his two children at the time the original petition was filed, even a biological father who has not established paternity has a clear moral duty to provide care for a child. *In re LE*, 278 Mich App 1, 23; 747 NW2d 883 (2008). Therefore, the same housing instability that was a basis for adjudication for respondent-mother also applies to respondent Parks. Consistent therewith, respondent Parks' treatment plan also provided for the establishment of housing and a source of income sufficient to provide stability for the children.

The other allegations admitted by respondent Parks related to a complaint that he physically abused one of respondent-mother's other children and that he burned the hand of another child for the claimed purpose of removing a wart. Although these allegations do not involve respondent Parks' own children, they implicate his ability to parent his children. See *In re Powers*, 208 Mich App 582, 588-592; 528 NW2d 799 (1995). And while there was no evidence that the complaint of physical abuse was substantiated, respondent Parks' therapist testified that respondent Parks admitted to making an inappropriate attempt to restrain the child.

The record discloses that respondent Parks was provided with several services to improve his parenting abilities, including parenting classes and parenting time with his children. The record does not support respondent Parks' assertion on appeal that his parenting time was deliberately sabotaged by requiring him bring a "behaviorally challenged child" to visits with the children. The caseworker testified that she asked respondent Parks to bring his other daughter to visits to introduce the children to their half-sibling to facilitate the forging of bonds between siblings and to evaluate how respondent Parks interacted with three of his children present.

In any event, the trial court's primary concern was respondent Parks' failure to be able or willing to utilize the parenting skills he was taught. The trial court appropriately found that respondent Parks was required to demonstrate sufficient progress during supervised parenting time before unsupervised parenting time could be considered. When a parent does not have custody of a child, parental fitness can only be judged in other ways, such as the parent's work on a court-ordered treatment plan. *In re Sours*, 459 Mich 624, 638; 593 NW2d 520 (1999). A respondent's failure to work on a treatment plan, or benefit there from, is evidence that a child would be at risk of harm in the respondent's home. *In re Gazella*, 264 Mich App at 676-677.

Considering the evidence as whole, including respondent Parks' housing and employment situation, his failure to continue participating in services to improve his literacy to enable him to function independently, and his failure to benefit from the services provided to rectify his parenting deficiencies, the trial court did not clearly err in finding that there was clear and convincing evidence that the conditions that led to the adjudication continued to exist and were not reasonably likely to be rectified within a reasonable time considering the ages of the children, thereby justifying termination under § 19b(3)(c)(*i*).

The trial court also found that termination was appropriate under § 19b(3)(c)(*ii*) because of respondent Parks' failure to adequately address domestic violence issues. Considering the testimony of respondent Parks' therapist that respondent Parks failed to recognize the impact of his yelling and screaming on the children, the number of sessions that respondent Parks missed, and the other evidence regarding respondent Parks' difficulty in controlling his anger, we find no clear error in the trial court's determination that § 19b(3)(c)(*ii*) was established. In addition, while only one statutory ground for termination is required, *In re Powers*, 244 Mich App at 118, the evidence supports the trial court's determination that § 19b(3)(g) was also established.

Finally, considering the record as a whole, the trial court did not clearly err in finding that termination of respondent Parks' parental rights was in the children's best interests. MCL 712A.19b(5); *In re JK*, 468 Mich at 209; *In re Jones*, 286 Mich App at 129.

III. DOCKET NO. 300364

Respondent-mother challenges the trial court's finding that a statutory ground existed to terminate her parental rights to DP. Having upheld the trial court's decision to terminate respondent-mother's parental rights to her five older children in Docket No. 298971, we find no basis for reversal in Docket No. 300364. The prior termination of respondent-mother's parental rights to her five older children supports the trial court's decision to terminate her parental rights to DP under § 19b(3)(l). Contrary to respondent-mother's argument on appeal, it was not necessary that petitioner offer services before seeking termination of her parental rights to DP. A trial court is permitted to terminate parental rights at the initial dispositional hearing, MCR 3.977(E), and reasonable efforts to reunify a child and a family are not required where "[t]he parent has had rights to the child's siblings involuntarily terminated." MCL 712A.19a(2)(c); see also *In re JL*, 483 Mich 300, 317-318; 770 NW2d 853 (2009).

We also disagree with respondent-mother's argument that termination of her parental rights to DP was premature while an appeal was pending from the order terminating her parental rights to her five older children. An order is valid and binding until it is set aside. See *Jackson City Bank & Trust Co v Fredrick*, 271 Mich 538, 545-546; 260 NW 908 (1935). The Adoption Code contains an express prohibition against adoptions pending an appeal from an order terminating parental rights. MCL 710.56(2); *In re JK*, 468 Mich at 216. But there is no comparable prohibition against terminating parental rights under MCL 712.19b(3)(i) or (l) when an appeal for a prior termination order is pending.

Respondent-mother's additional argument that the "premature" termination deprives her of due process is unpreserved because this argument was not presented to the trial court. *City of Westland v Okopski*, 208 Mich App 66, 72; 527 NW2d 780 (1994). We review unpreserved

claims of error for plain error affecting substantial rights. *In re Mitchell*, 485 Mich 922; 773 NW2d 663 (2009); *In re Utrera*, 281 Mich App at 8. Here, respondent-mother fails to brief this alleged claim of error and, accordingly, has failed to satisfy her burden of establishing a plain error affecting her substantial rights.

IV. DOCKET NO. 300365

Relying on *In re Gazella*, 264 Mich App at 680-681, respondent Parks argues that the trial court erred in relying on the doctrine of anticipatory neglect to terminate his parental rights to DP. Respondent Parks argues that new information was required before the trial court could terminate his parental rights to DP. We disagree.

To terminate parental rights at an initial dispositional hearing, a trial court is required to find a statutory basis for jurisdiction under MCL 712A.2(b). MCR 3.977(E)(2). However, "[a] child may come within the jurisdiction of the court solely on the basis of a parent's treatment of another child. Abuse or neglect of the second child is not a prerequisite for jurisdiction of that child and application of the doctrine of anticipatory neglect." *In re Gazella*, 264 Mich App at 680-681. Therefore, under the doctrine of anticipatory neglect, the trial court could rely on respondent Parks' history of treatment of other children to find a sufficient basis for exercising jurisdiction over DP.

Further, because respondent Parks' parental rights to his two other children were previously terminated, a decision we have affirmed on appeal, the trial court did not clearly err in finding that termination of respondent Parks' parental rights to DP was warranted under § 19b(3)(l).

Affirmed.

/s/ Douglas B. Shapiro
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello